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UNITED STATES GOVERNMENT
National Labor Relations Board

Memorandum

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536-5025-3300
536-5050-0150

DATE: March 28, 1980

TO : Robert S. Fuchs, Director
Region 1

FROM : Harold J. Datz, Associate General Counsel
Division of Advice

SUBJECT: Granite State Joint Board, and Shoe
Division, Amalgamated Clothing and Textile
Workers Union
(Bendey Shoe, Inc.)
Case No. 1-CB-4792

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This case was submitted for advice as to whether the mere existence of a clause in a union's constitution which purports to restrict the right of members to resign from union membership during a strike violates Section 8(b)(1)(A).

FACTS

The Shoe Division, Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC (hereinafter the Union) obtained signed authorization cards from 75 of the 160 production and maintenance workers of Bendey Shoe, Inc. (hereinafter the Employer), and on February 20, 1980 1/ it filed a representation petition with the Board. 2/ The authorization cards designated the Union as the representative of the card signer, and some of the cards also conferred membership in the Union on the signer. 3/

Article IX, Section 11, of the Union's constitution provides:

Resignation from union membership must be submitted in writing individually and by certified or registered mail to the secretary of the local union no less than fifteen (15) days before the effective date of the resignation, provided that no resignation shall be tendered or be effective during the period of any

1/ All dates hereinafter are in 1980 unless otherwise indicated.

2/ Case No. 1-RC-16,784.

3/ The evidence indicates that 5 of the 75 signed cards contain this membership provision.



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strike against an employer by whom the member purporting to resign is employed. This Section shall not apply to, modify, or affect in any way the terms or provisions of any collective bargaining agreement, or the terms or provisions of any dues deductions authorization signed by any member purporting to withdraw from membership in the union.

The Employer filed the instant charge on February 22 alleging that by promulgating and maintaining the above clause in its constitution, the Union and the Granite State Joint Board are restraining and coercing employees in violation of Section 8(b)(1)(A) of the Act. 4/ The Employer's position is that the constitutional provision restricts or prevents members' resignations and thus directly interferes with their Section 7 right to refrain from engaging in union activity.

The Region found no evidence that the employees were aware of the constitutional provision and no basis to conclude that the provision had any impact on their exercise of Section 7 rights. No strike has been called or is in progress against the Employer, and there is no evidence that the Union has attempted to enforce the provision.

ACTION

It was concluded that the charge should be dismissed, absent withdrawal, on the view that there is no justiciable issue between the parties which may be resolved in a Board proceeding.

It is settled that the right to resign from union membership is not absolute, but may be reasonably restricted by a union. 5/ However, in Empire Enterprises, 6/ the Board made it clear that it will not consider the lawfulness of a given union rule relating to resignation absent evidence that the union has attempted to enforce the rule, e.g., by fining the offending employees. 7/ In Empire, the union had enacted a bylaw provision which barred resignation from union membership when

4/ The representation petition is being held in abeyance pending resolution of the instant blocking charge.

5/ See Ex-Cell-O Corp., 227 NLRB 1045 (1977); O.K. Tool Co., Inc., 215 NLRB 651 (1974).

To date, the Board has not determined the parameters of such reasonable restrictions. See General Counsel Memorandum 80-9, "Alleged 8(b)(1)(A) Violations Involving Restrictions on Resignations From Union Membership," dated February 19, 1980.

6/ Meat Cutters Union Local 81, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO (Empire Enterprises), 241 NLRB No. 125 (1979).

7/ Even where the Board has found a rule to be unreasonably restrictive both on its face and as enforced, the remedy has never included

(Continued)

economic action by the union was "imminent or in progress." The Administrative Law Judge concluded that the bylaw provision constituted restraint and coercion within the meaning of Section 8(b)(1)(A), even though he acknowledged that "the absence of strike action at Empire and the lack of any attempt to enforce the bylaw provision" made the issue purely theoretical. The Board reversed the Administrative Law Judge and concluded that inasmuch as there was no strike against the employer, no one had attempted to cross a picket line, and no employees had attempted to resign, none of the employees were subject to union discipline under the bylaw provision. The Board pointed out that it does not decide cases cast "in pure theoretical terms," and concluded that "the case [was] not ripe for decision, and that there [was] no justiciable issue between the parties involved which may be resolved in a Board proceeding." 8/

It was concluded that Empire Enterprises is controlling in the instant case. Thus, although Article IX, Section 11, of the Union's constitution purports to restrict the right of members to resign their membership and although some of the employees who signed cards are arguably members of the Union, 9/ there is no evidence that the Union has ever enforced or attempted to enforce the clause in question against the Employer's employees. Consequently, the issue in the instant case, as in Empire, is purely theoretical and is not ripe for decision.

Accordingly, further proceedings are unwarranted and the charge should be dismissed, absent withdrawal.

H. J. D.

7/ Continued:

recission of the rule, but has been limited to an order requiring the union to cease and desist from applying the rule in an unlawful manner. St. Louis Newspaper Guild, Local 47, TNG (The Pulitzer Publishing Co., St. Louis Dispatch), Case No. 14-CB-4532, Advice Memorandum dated March 25, 1980, and cases cited therein.

8/ Cf. Chesapeake and Potomac Telephone Co., Case 5-CB-3278-1; 3278-2; 3283-2, Advice Memorandum dated March 28, 1980, in which complaint was authorized as to unions' threats, pursuant to rules relating to resignation, made to employees who had submitted resignations, that if they crossed a picket line they would be fined. In that case no strike actually occurred and no one attempted to cross a picket line. The instant case differs from Chesapeake and Potomac Telephone in that here there were no resignations and no threats to fine employees pursuant to this restrictive rule.

9/ In view of our decision, we do not reach the issue of whether the five employees who signed the cards containing the membership provision thereby became Union members. See Teamsters Local 776, IBTCWHI (Kinney Service Corporation), Case 4-CB-3910, Advice Memorandum dated January 22, 1980.